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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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John M. Svendsen

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MINNEAPOLIS, MN 55402

EXAMINER

WALCZAK, DAVID J

ART UNIT

PAPER NUMBER

3751

DATE MAILED: 10/06/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/808,257

Applicant(s)

SVENDSEN ET AL.

Examiner

David J. Walczak

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– The MAILING DATE of this communication appears on the cover sheet with the correspondence address –

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 15 August 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) 17-21 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>7/31/06</u> . | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Specification***

The disclosure is objected to because of the following informalities: In paragraph 0010, "XIII" should be --VIII--. Appropriate correction is required. It is noted that this objection was made in the previous office action but was not corrected by the Applicant.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2 and 7-16 remain rejected under 35 U.S.C. 102(b) as being anticipated by Grey. In regard to claim 1, Grey discloses an apparatus comprised of a generally flat coating applicator pad (made up of shorter bristles 27) having at least one delivery channel (33 and the space between the bristle groups) for delivering fluid to the planar surface of the pad and a plurality of bristles 27a extending out of the planar surface of the pad. It is noted that the statements of intended use, i.e., "for applying coating materials to a deck" do not lend any patentable structure to the claims. Further, the Grey device is capable of being used as claimed should a user so choose to employ the device. In regard to claim 2, the bristles are inherently flexible. In regard to claims 7 and 8, the gaps between the bristle groups 27 define an "aperture" that extends on both

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sides of the bristles (see Figure 8) which would inherently receive the bristles 27a (at least to some degree) when the bristles 27a are bent during use. In regard to claim 9, the device includes a coating delivery channel 33 for providing material to the bristles. In regard to claims 10-14, two adjacent bristles groups 27a comprise bristles that are angled as claimed, i.e. "about 67.5 degrees" (at the top thereof, see Figure 3) and are spaced as claimed, i.e. "about .08 inches". In regard to claims 15 and 16, the apparatus includes a base plate 26 attached to the pad and a handle 20 pivotally attached to the base plate wherein the bristles 27a are spaced from the axis of the handle.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 3-6 remain rejected under 35 U.S.C. 103(a) as being unpatentable over Grey. Although the Grey reference does not disclose the material used to make the bristles, the Examiner takes official notice that the claimed materials are commonly used to make brush bristles (depending on the intended use of the brush). Accordingly, it is the Examiner's position that the bristles can be made from any suitable material, including the claimed material, without effecting the overall operation of the device.

### ***Response to Arguments***

Applicant's arguments filed 8/15/06 have been fully considered but they are not persuasive. The Applicant contends that the Grey reference is not applicable against claim 1 in that the layer of bristles 27 do not define a "pad". However, Webster defines "pad" as a "thin flat mat or cushion" (see Merriam Webster's Collegiate Dictionary, tenth edition) and the layer of bristles 27 of Grey certainly defines a "thin" (the bristled layer is "thin" when compared to the remainder of the device), flat (the top surface of the bristled layer is flat) "cushion" (the bristles will act as a cushion when a force is exerted on the upper surface thereof). Accordingly, the layer of bristles 27 is considered to defined a "pad". Further, the Applicant has not given any special definition to the term "pad" that would preclude defining a mass of bristles as a pad. Also, the Applicant indicates that the disclosed "pad" can include a layer of bristles (see paragraph 0049).

In regard to claims 7 and 8, as discussed above, the "pad" includes an aperture that extends on both sides of the bristles (see Figure 1) and the spaces between the bristles that make up pad 27 will receive bristles 27a (as least to some degree) when bristles 27a are bent toward the pad 27.

In regard to claim 10, a first group of bristles are oriented at an angle of less than 90 degrees to the pad surface. Contrary to the Applicant remarks, the bristles are not oriented along axes that are 90 degrees to the mounting member 26 but are angled with respect to the mounting member (see Figure 3). Further, the claim does not define the bristles being angled with respect to the mounting member but with respect to the planar surface of the pad and viewing Figure 3, the bristles 27a are clearly angled with respect to the top surface of pad 27.

In regard to claim 11, contrary to the Applicant's remarks, the angle discussed above is "about" 67.5 degrees, i.e., the term "about" is very broad and encompasses a wide array of orientations. As the Applicant has not further defined the term "about", the angle discussed above can be considered "about" 67.5 degrees.

In regard to claim 12, viewing Figure 1, there are two sets of bristles (on opposite sides of the bristle mass 27a that are angled in opposite directions with respect to the planar surface of the pad wherein the angles are "generally" equal.

In regard to claim 14, the spacing between the bristle groups is "about" 0.08 inches. Again, the term "about" is very broad and encompasses a wide array of orientations. As the Applicant has not further defined the term "about", the spacing discussed above can be considered "about" 0.08 inches (depending on where each "bristle group" begins).

In regard to claim 15, the threaded attachment between the baseplate 26 and handle 20 defines a "pivotal" connection.

In regard to claim 16, the spaced from the handle axis as claimed. Again, the term "about" is very broad and encompasses a wide array of orientations. As the Applicant has not further defined the term "about", the spacing discussed above can be considered "about" 1.25 inches.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David J. Walczak whose telephone number is 571-272-4895. The examiner can normally be reached on Mon-Thurs, 6:30- 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu can be reached on 571-272-4835. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



David J. Walczak  
Primary Examiner  
Art Unit 3751

DJW  
9/27/06